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Supreme Court, U.S.
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No. 87-2085

In The
Supreme Court of the United States
October Term, 1987

ARKANSAS STATE BOARD OF EDUCATION, *ET AL.*,
Petitioners,

V.

LITTLE ROCK SCHOOL DISTRICT, *ET AL.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

WHETHER THE COURT OF APPEALS CORRECTLY DIRECTED THE STATE TO FUND PART OF A LOCAL SCHOOL DISTRICT'S DESEGREGATION REMEDY WHEN THE STATE WAS ORIGINALLY FOUND TO BE A CONSTITUTIONAL VIOLATOR.

II

WHETHER THE EIGHTH CIRCUIT CORRECTLY REQUIRED THE STATE TO FUND VARIOUS COMPENSATORY AND REMEDIAL EDUCATION PROGRAMS FOR THE LITTLE ROCK SCHOOL DISTRICT.

III

WHETHER THE EIGHTH CIRCUIT'S IMPOSITION OF FUNDING REMEDIAL AND COMPENSATORY EDUCATION PROGRAMS UPON THE STATE IS A REASONABLE REMEDY CONSISTENT WITH THE SCOPE OF THE STATE'S CONSTITUTIONAL VIOLATION.

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REASONS FOR DENYING THE WRIT

The State asserts that the Eighth Circuit's directive to it is merely to pay money. This overlooks the initial district court and Court of Appeals' findings that the State was a primary constitutional wrongdoer with desegregative obligations both financial and otherwise. *Little Rock School Dist. v. Pulaski County Special School Dist.*, 778 F.2d 404, 411-17, 423, 426, 433, 436 (8th Cir. 1985).

The Court of Appeals' decision does not conflict with the recent Sixth Circuit decision in *Kelley v. Board of Ed. of Nashville and Davidson County*, 836 F.2d 986 (6th Cir. 1987). There the state was brought in by a third party action after liability had been assessed against the county. Here the State was an initial party found by the court to have contributed to segregation. Pursuant to *Milliken v. Bradley*, 433 U.S. 267 (1977), the State of Arkansas was required to spend money ancillary to its obligation to end segregation. There is no conflict among the circuits by the Eighth Circuit's decision here and *Kelley*.

Nor is there a conflict on the issue of the local district's ability to pay the costs of desegregation. The distinction, again, is that the State here is a constitutional violator. In *Kelley*, the State of Tennessee was added merely to obtain benefit of its "deep pocket". No liability determination was made against the State of Tennessee in *Kelley*.

Moreover, a segregation victim's (Little Rock School District) ability to pay for its own remediation is not relevant. It is the responsibility of the constitutional violator to pay the costs of remedying its segregative wrongs.

The State correctly points out that the nature of a desegregation remedy is determined by the nature of the constitutional violation, citing *Milliken,* 433 U.S. at 280, and *Swann v. Charlotte-Mecklenburg Board of Ed.,* 402 U.S. 1, 16 (1971). The Eighth Circuit's requirement that the state pay for compensatory and remedial education programs is consistent with the State's constitutional violation. The violation has not been cured, hence the State's obligation continues. The Eighth Circuit has not departed from the law of the case and there is no call for an exercise of this Court's supervisory power.

CONCLUSION

The Eighth Circuit's decision presents no conflict among the circuits in school desegregation cases. Nor does this case possess any important issues justifying this Court's consideration. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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